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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,854	01/16/2004	Sreenivas Addagatla	042933/271712	6954

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EXAMINER

WHIPPLE, BRIAN P

ART UNIT	PAPER NUMBER
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2448

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/758,854	Applicant(s) ADDAGATLA ET AL.	
	Examiner Brian P. Whipple	Art Unit 2448	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,12,16-22,26,27,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,12,16-22,26,27,29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/23/10</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, 26-27, and 29-30 are pending in this application and presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/2/10 has been entered.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 4-7, 12, 16-22, and 26-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4, 19, 22, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman et al. (Gutman), U.S. Patent No. 7,366,930 B2, in view of Ellis et al. (Ellis), U.S. Publication No. 2005/0132040 A1, and further in view of Heaton, U.S. Patent No. 5,922,052.

6. As to claim 1, Gutman discloses a system (Col. 1, ln. 48-55) comprising:

a first host configured to provide for transmission of multiplexed data a first data transfer rate (Col. 4, ln. 64-65);

a second host configured to receive multiplexed data a second data transfer rate (Col. 4, ln. 66-67);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 1, ln. 64 – Col. 2, ln. 6);

a data throttle, wherein the data throttle is configured to limit the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate, and wherein the second and third data transfer rates are obtained during a communication session start-up process from signaling, and wherein at least two of the first, second, and third data transfer rates are different from one another (Col. 3, ln. 46-52; Col. 5, ln. 1-7).

It may be argued that Gutman is silent on a third data transfer rate of a network between the first and second hosts; and

a communication session.

However, Ellis discloses a third data transfer rate of a network between the first and second hosts ([0098], ln. 7-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman in the aforementioned manner as taught by Ellis in order to limit a transfer rate to the least capable of a plurality of nodes in a network (Ellis: [0098], ln. 7-13).

Gutman and Ellis may be argued to be silent on a communication session.

However, Heaton discloses the auto-negotiation is a communication session (Col. 1, ln. 66 – Col. 2, ln. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman and Ellis as taught by Heaton in order to clarify that auto-negotiation takes place via a communication session (Heaton: Col. 1, ln. 66 – Col. 2, ln. 1).

7. As to claims 4, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

8. Claim 12, 16, and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman, Ellis, and Heaton as applied to claims 1 and 19 above, and further in view of Official Notice (See MPEP 2144.03).

9. As to claim 12, Gutman, Ellis, and Heaton disclose the invention substantially as in parent claim 1, but do not explicitly disclose SIP.

Official Notice is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman, Ellis, and Heaton by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

10. As to claim 16, the claim is rejected for reasons similar to the combination of claims 1 and 12 above.

11. As to claims 29-30, the claims are rejected for reasons similar to claim 12 above.

12. Claims 5-7, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman, Ellis, and Heaton as applied to claims 1, 19, and 26 above, and further in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

13. As to claim 5, Gutman, Ellis, and Heaton disclose the invention substantially as in parent claim 1 above, but re silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gutman, Ellis, and Heaton by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

14. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

15. As to claim 7, Gutman, Ellis, Heaton, and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

16. As to claims 20 and 27, the claims are rejected for similar reasons to claim 6 above.

17. As to claim 21, the claim is rejected for similar reasons to claim 7 above.

18. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutman, Ellis, Heaton, and Official Notice (See MPEP 2144.03) as applied to claim 16 above, and further in view of Bach.

19. As to claim 17, the claim is rejected for reasons similar to claim 6 above.

20. As to claim 18, the claim is rejected for reasons similar to claim 7 above.

Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
/Brian P. Whipple/
Examiner, Art Unit 2448
3/6/11